IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

LAXMAN DAN. V. THE LABOUR COURT, BIKANER & ANOTHER.

S.B.CIVIL WRIT PETITION NO.4504/2005, under Article 226 and 227 of the Constituion of India.

DATE OF ORDER: AUGUST 26, 2005.

PRESENT.

HON'BLE MR. JUSTICE R.P.VYAS.

Mr.Narpat Singh, for Petitioner.
None present for Respondents.

BY THE COURT:

REPORTABLE.

By the instant petition, the petitioner has prayed that the impugned award dated 27.2.2004 (Annexure 5) may be modified to the extent of granting full back wages to the petitioner from the date of his illegal termination till the date of his reinstatement with interest and other consequential benefits. He has also prayed that the respondents may be directed to implement the award dated 27.2.2004 immediately by reinstating the petitioner and granting him other benefits accordingly.

Brief facts giving rise to the instant petition are that in the month of December, 1985, the petitioner was appointed on the

post of Clerk by the Rajasthan Agriculture University, Bikaner (hereinafter referred to as 'the University'). It is averred by the petitioner in the writ petition that the work of Driver was also taken from him by the University. He continuously discharged his duties in the University from his date of appointment till 2.9.1996, the date on which his services were terminated by the University. Before terminating his services, neither one month notice, nor any advance salary in lieu thereof nor compensation was given to the petitioner. It is also averred by the petitioner in the instant petition that a number of persons, namely, Harish Chandra, Mahaveer, Umed Singh, Farook Ali, Aziz, Shiv Singh, Mohan, Nepal Singh and Ridha Ram who were junior to the petitioner, were confirmed by the University, but the services of the petitioner were illegally terminated by the University. The petitioner was not gainfully employed anywhere after his termination, i.e., 2.9.1996 till date.

Upon illegal termination, the petitioner raised an industrial dispute, wherein an appropriate Government made a reference under Section 10 (1) © of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act, 1947'), in the following terms :-

> "Whether termination dated 2.9.96 of workman Laxmandan Charan S/o. Shri Mohandan by his employer

> Registrar, Rajasthan Agriculture University was valid and legal ? If not, then workman is entitled for what relief and amount ?"

In pursuance to the aforesaid reference, the petitioner filed Claim Petition No.35/1998 (Annexure 1) before the Labour Court, Bikaner. A reply dated 11.6.1999 (Annexure 2) to the claim petition was filed by the University. In support of his claim petition, the petitioner filed an affidavit (Annexure 3), upon which he was cross-examined. On behalf of the University, Mr. Eid Mohammad submitted his affidavit (Annexure 4), whereupon he was cross-examined.

After hearing the learned counsel for both the parties and perusing the documents, the learned Labour Court, Bikaner passed the award dated 27.2.2004 (Annexure 5), whereby the termination of the petitioner was declared invalid and illegal and the same was quashed. The learned Labour Court also granted the benefit of continuity of service in favour of the petitioner and directed the respondent – University to reinstate him with the compensation amount to Rs.3,000/-. The back wages were declined by the Labour Court to the petitioner.

After passing the award, the petitioner approached Respondent No.2 – University to reinstate him and grant benefit in compliance with the award dated 27.2.2004.

The petitioner was kept under the impression by the respondent No.2 – University that his case is under consideration and he will be reinstated soon in compliance with the aforesaid award, but, till May, 2005, the petitioner was not reinstated by the respondent – University.

Ultimately, the petitioner sent a registered notice for demand of justice on 24.5.2005 (Annexure 6), requesting the University to comply with the award dated 27.2.2004 passed by the Labour Court. But neither the petitioner has been reinstated, nor granted the benefit nor the award dated 27.2.2004 has been implemented by the respondent – University.

Being aggrieved by the non-implementation of the award dated 27.2.2004 passed by the Labour Court, Bikaner, the petitioner has preferred the instant petition.

It is submitted by the learned counsel for the petitioner that the Labour Court, Bikaner has categorically recorded a finding that the petitioner had continuously worked for more than 240 days in the preceding year prior to termination of his services. He has not left the service on his own, but his services have been terminated by the respondent – University without following the mandatory provision of the Act, 1947, therefore,

the same amounts to retrenchment.

It is further submitted by the learned counsel for the petitioner that the petitioner was not gainfully employed anywhere after his illegal termination of services and he remained unemployed from the date of termination of his services uptil today. Thus, according to the learned counsel, the petitioner is entitled to get the full back wages.

It is also submitted by the learned for the petitioner that the petitioner had not only discharged the duties of a Clerk, but has also discharged the duties of Driver. The respondent – University has not produced the relevant service record of the petitioner before the Labour Court, which clearly establishes the contention of the petitioner he has worked on the post of Clerk as well as Driver also.

It is strenuously argued by the learned counsel for the petitioner that after passing the award, the petitioner has constantly been requesting the respondent – University to reinstate him and implement the award dated 27.2.2004 passed by the learned Labour Court. He has also served a notice for demand of justice on the respondent – University. But, despite that, due to inaction on the part of the University, no action has been taken by them in this regard, whereas the University is

under an obligation to reinstate the petitioner immediately in accordance with the directions given in the award dated 27.2.2004. This action of the respondent-University is not only illegal and arbitrary, but amounts to contempt also.

While placing reliance on the case of Rup Ram & Others v. State of Rajasthan & Others (1993 (1) .R.L.R. 695), learned counsel for the petitioner submitted that by non-compliance of the award, the respondent – University has indirectly deprived the petitioner of his right to livelihood and has violated his fundamental right to life as envisaged by Article 21 of the Constitution of India.

Heard learned counsel for the petitioner.

The instant petition was filed by the petitioner on July 28, 2005. On August 1, 2005, show-cause notices were issued to the respondents as to why the writ petition be not disposed of at the admission stage. Notices were given 'dasti' and were made returnable within a period of ten days. The notices were served on the respondents on 9.8.2005. It was specifically mentioned in the notices that "you are hereby informed that you may appear in person or by a pleader duly instructed on 12.8.2005 at 10.30 A.M. to show cause why the writ petition should not be admitted, otherwise the said writ petition will be heard and disposed of at the admission stage." It may be mentioned that despite

sufficient service, none of the respondents has put in appearance before the Court.

Having given my thoughtful consideration to the submission of the learned counsel for the petitioner, I am of the view that the respondent – University has acted in a most arbitrary manner. They have shown scant regard to the provisions of law. Once an award is made by the Labour Court, it becomes law and unless it is challenged before an appropriate forum, a party against whom the award is made, is duty bound to give effect to the award. If the award passed by the Labour Court is not challenged and stayed by a Superior Court, no option is left with the party concerned, but to implement it. Very existence of the Labour Court will become questionable if employer like University is allowed to ignore the award passed by the Labour Court. A situation of this type will lead to total subversion of the system of administration of justice.

The writ petition is, therefore, disposed of with a direction to the respondent – University to implement the award dated 27.2.2004 within a period of one month from the date of receiving a certified copy of this order.

There will be no order as to costs.

(R.P.VYAS), J.

scd.